

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RUSSELL D. ROSCO and BONNIE
R. ROSCO,

Plaintiffs,

v.

EQUIFAX INFORMATION
SERVICES; AMERICREDIT;
CAPITAL ONE AUTO FINANCE;
CONSUMER PORTFOLIO
SERVICES; COSTCO
WAREHOUSE; EXETER
FINANCIAL; EXPERIAN
INFORMATION SOLUTIONS;
FIRST BANK MORTGAGE;
FLAGSHIP CREDIT; GLOBAL
LENDING SERVICES, INC.;
GROSSINGER KIA; LAFONTAINE
TOYOTA; REGIONAL
ACCEPTANCE; ADVANTAGE
GROUP; TIDEWATER CREDIT; and
TRANSUNION LLS,

Defendants.

NO: 2:15-CV-325-RMP

ORDER DENYING MOTION FOR
RECONSIDERATION AND MOTION
FOR LEAVE OF COURT TO FILE
SECOND AMENDED COMPLAINT

BEFORE THE COURT are Plaintiffs' Motion for Reconsideration, ECF No.
146, and Plaintiffs' Motion for Leave of Court to File Second Amended Complaint
ORDER DENYING MOTION FOR RECONSIDERATION AND MOTION FOR
LEAVE OF COURT TO FILE SECOND AMENDED COMPLAINT ~ 1

1 and Jury Demand, ECF No. 147. The Court has reviewed the motions, the record,
2 and is fully informed.

3 ANALYSIS

4 Plaintiffs' initial motion for reconsideration did not cite which law or rule
5 they rely upon, but the Court construed it as one brought pursuant to the Federal
6 Rules of Civil Procedure 59(e) and 60(b). "While Rule 59(e) permits a district
7 court to reconsider and amend a previous order, the rule offers an 'extraordinary
8 remedy, to be used sparingly in the interests of finality and conservation of judicial
9 resources.'" *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (quoting 12
10 James Wm. Moore et al., MOORE'S FEDERAL PRACTICE § 59.30[4] (3d ed. 2000)).
11 "Indeed, 'a motion for reconsideration should not be granted, absent highly
12 unusual circumstances, unless the district court is presented with newly discovered
13 evidence, committed clear error, or if there is an intervening change in the
14 controlling law.'" *Carroll*, 342 F.3d at 945 (quoting *Kona Enterprises, Inc. v.*
15 *Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)).

16 Similarly, Rule 60(b) permits "reconsideration only upon a showing of (1)
17 mistake, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud;
18 (4) a void judgment; (5) a satisfied or discharged judgment; or (6) 'extraordinary
19 circumstances' which would justify relief." *Fuller v. M.G. Jewelry*, 950 F.2d
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1 1437, 1442 (9th Cir. 1991) (citing FED. R. CIV. P. 60(b) and *Backlund v. Barnhart*,
2 778 F.2d 1386, 1388 (9th Cir. 1985)).

3 In their reply brief, Plaintiffs clarify that they are seeking reconsideration
4 pursuant to Rule 60(b)(1) and (b)(6). *See* ECF No. 158. These subsections allow
5 for relief from a final judgment, order, or proceeding due to “mistake,
6 inadvertence, surprise, or excusable neglect;” and “any other reason that justifies
7 relief.” FED. R. CIV. P. 60(b). Plaintiffs request that the Court reconsider its ruling
8 dismissing certain Defendants with prejudice, and have asked the Court to allow
9 them to file a Second Amended Complaint, which they have filed twice, ECF Nos.
10 146-1 and 147-1. Due to Plaintiffs’ tendency to file similar documents with minor
11 differences, the Court reviewed both copies of this proposed Second Amended
12 Complaint.

13 Having reviewed all of the pleadings and Plaintiffs’ proposed Second
14 Amended Complaint, the Court concludes that Plaintiffs have failed to support that
15 there was any mistake, inadvertence, surprise, or excusable neglect, or any other
16 reason to justify reconsideration. In addition, the Court finds that allowing
17 Plaintiffs to file their proposed Second Amended Complaint would be futile.

18 Although Rule 15 allows courts to liberally grant leave to amend complaints,
19 a district court “need not grant leave to amend where the amendment: (1)
20 prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue
21 delay in litigation; or (4) is futile.” *AmerisourceBergen Corp. v. Dailysist West*,

1 *Inc.*, 465 F.3d 946, 951 (9th Cir. 2006). “Courts may deny a motion to amend a
2 complaint if doing so would be futile.” *Haley v. TalentWise, Inc.*, 9 F. Supp. 3d
3 1188, 1195 (W.D. Wash. 2014) *reconsideration denied*, No. C13-1915 MJP, 2014
4 WL 1648480 (W.D. Wash. Apr. 23, 2014) (citing *U.S. ex rel. Lee v. SmithKline*
5 *Beecham, Inc.*, 245 F.3d 1048, 1052 (9th Cir. 2001)).

6 Plaintiffs’ motions are simultaneously rambling and repetitive, and their
7 claims are untethered to any legal basis. Although the motions contain irrelevant
8 arguments that this Court need not address, the substance of Plaintiffs’ motion and
9 proposed Second Amended Complaint attempts to clarify claims that allegedly
10 arose from what they refer to as “fraud in the inducement and/or fraud of
11 misrepresentation.” *See* ECF Nos. 146 and 147. Plaintiffs’ own words
12 summarizing what happened after Mr. Rosco filled out a credit application provide
13 insight into the nature of this case:

14 Prior to the submittal of the summary for summary motions, the
15 plaintiff did not know under what permissive permission the
16 Defendants were resting their ability to look at Plaintiff’s credit nor did
17 the plaintiff have anything but suspicion about the relationship between
18 the dealerships (Lafontaine Toyota and Grossinger Kia) and the
19 financial institution defendants. The only evidence the plaintiff had
20 was that the financial institution defendants were listed as entities that
21 looked at his credit during the previous two year period via a 3 bureau
credit report.

ECF No. 146 at 2.

Mr. Rosco signed and submitted a credit application that explicitly allowed
others to look into his credit. Plaintiffs allege that they

1 had been verbally assured by the salesperson at Lafontaine Toyota that
2 the credit application would only be used for the purpose of determining
3 buying power (DE 135-1 paragraphs 2-4; DE 135-2 paragraph [sic] 3-
4 7). Any other use would subject the credit application to fraud in the
5 inducement and thus voidable (DE 135-1 paragraphs 5-7). The Plaintiff
6 wishes to void the credit application (DE 135-1 paragraphs 8-9).

7 ECF No. 146 at 2. This allegation directly contradicts the language of the credit
8 application, which states one inch above Mr. Rosco's signature:

9 I authorize dealer and any creditor to which dealer submits my
10 application, together with any affiliates, agents, service providers or
11 assignees of the dealer or creditor ("you" or "your") as follows. You
12 may investigate my credit and employment history, obtain consumer
13 reports on me and contact my references in connection with this
14 application. If an account is opened for me in response to this
15 application, I authorize you to: obtain credit reports on me for the
16 review, update, extension or collection of my account or other
17 legitimate business purpose related to my account; contact my
18 references and other creditors in connection with the collection of my
19 account including the location of my financed or leased vehicle, and
20 release information about your credit experience with me as permitted
21 by law.

ECF No. 118-1 at 2. Therefore, Plaintiffs' attempt to amend the First Amended
Complaint to add allegations of "fraud in the inducement and/or fraud of
misrepresentation" due to the dealership doing exactly what Mr. Rosco's signed
statement authorized is a futile attempt to provide clarification and revive claims
that were previously dismissed.

Furthermore, Plaintiffs allege that financial institution Defendants did not
have a permissible purpose to view Plaintiffs' credit because LaFontaine Toyota
committed fraud in getting Mr. Rosco to sign the application, and due to the

1 “subsequent Plaintiff Russell D. Rosco[’s] voiding of credit application . . .”. *See*
2 *e.g.*, ECF No. 146-1 at 9. The Court has considered the sequence of these
3 allegations: (1) Plaintiffs applied for credit; (2) certain Defendants acted on that
4 application, (3) Plaintiff now states that Mr. Rosco “voids the credit application”
5 three years after signing it, and (4) Plaintiffs now allege that certain Defendants
6 acted improperly because they should have known that Mr. Rosco’s signature
7 would be “voided” three years later. Plaintiffs do not cite to any statute or law that
8 would support their claims.

9 The Court notes that Plaintiffs previously referred to “15 U.S.C. § 1681etseq
10 [sic]” as the statutory basis for their allegations that charged violations of their
11 “constitutional and/or statutory rights” and now cite to 15 U.S.C. § 1681(b) and/or
12 15 U.S.C. § 1681(o).” *See e.g.*, ECF No. 147-1 at 9. 15 U.S.C. § 1681(b) is a
13 purpose statement, but even if Plaintiffs meant to refer to 15 U.S.C. § 1681b,
14 which does in fact state permissible purposes of consumer reports, they
15 nonetheless fail to state which sections of that statute their claims rely upon.
16 Similarly, there is no “15 U.S.C. § 1681(o),” but if Plaintiffs intended to refer to 15
17 U.S.C. § 1681o, that statute states the amount of damages that a defendant may be
18 liable for as a result of their violating the requirements of that subchapter. Again,
19 Plaintiffs fail to state how this statute is applicable to Defendants’ actions. They
20 also seem to contradict the amounts of liability referenced by that statute as they
21 seek in relevant part: “[a] jury verdict for compensatory damages of \$1000 per

1 violation of 15 U.S.C. § 1681, exclusive of costs and interest that Plaintiffs are
2 found to be entitled;” and “[p]unitive/exemplary damages against Defendants in
3 whatever amount, exclusive of costs and interest, that Plaintiffs are found to be
4 entitled, up to and including nine times punitive damages . . .”. ECF No. 147-1 at
5 18-19. The Court is unable to ascertain any basis for these amounts.

6 The Court previously determined that allowing Plaintiffs to file a Second
7 Amended Complaint would be futile and it “would unduly prejudice Defendants by
8 forcing them to continue to litigate against baseless claims.” ECF No. 145 at 12.
9 Plaintiffs’ proposed Second Amended Complaint still fails to state a claim against
10 the dismissed Defendants and makes bare assertions separate from any viable
11 cause of action.

12 The Court recognizes that there are numerous other Defendants who have
13 not been dismissed from this case and two who have filed motions for summary
14 judgment. Because Plaintiffs have been put on notice of the deficiencies of their
15 pleadings repeatedly and have been unable to remedy those deficiencies, the Court
16 finds that allowing Plaintiffs to file their proposed Second Amended Complaint
17 would be futile and would unduly prejudice Defendants at this stage in the
18 proceedings after motions for summary judgment already have been filed.

19 Accordingly, **IT IS HEREBY ORDERED THAT:**

20 1. Plaintiffs’ Motion for Reconsideration, **ECF No. 146**, is **DENIED**.

2. Plaintiffs' Motion for Leave of Court to File Second Amended Complaint and Jury Demand, **ECF No. 147**, is **DENIED**.

The District Court Clerk is directed to enter this Order and provide copies to counsel and to pro se Plaintiffs.

DATED this 28th day of June 2016.

s/ Rosanna Malouf Peterson
 ROSANNA MALOUF PETERSON
 United States District Judge